IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-283

FREDERICK E. ADAMS,

Petitioner,

vs.

ROBERT WILLIAMS,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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Argument

The petitioner in electing to file this reply brief does so for the purpose of answering certain items in the brief filed by the respondent. Obviously, petitioner will attempt to avoid repeating or reiterating the statements contained in his initial brief or matters covered by briefs of the Amicus Curiae. The petitioner intends to respond only to limited portions of respondent's brief.

I

The Connecticut Circuit Court Proceeding

The brief of the respondent and that filed by the American Civil Liberties Union both refer to testimony and more specifically to questions asked Sergeant Connolly at a preliminary hearing in the Connecticut Circuit Court. It should also be noted that the United States District Court conducted a full testimonial hearing specifically for the purpose of considering that testimony and to ascertain the true facts (A-49). During the preliminary hearing in the Connecticut Circuit Court, a prosecuting attorney in addressing several questions to Officer Connolly used the words "police signal" or "call". Officer Connolly himself never uttered either designation (A-12 to 14). Officer Connolly testified at the hearing in the District Court, and that Court specifically found that the facts as they appear in the Superior Court record were substantiated and were adopted as the findings of the District Court (A-51).

The respondent's reference to the lower court testimony is apparently included for the purpose of strategy in anticipation that this Court which never saw Sergeant Connolly or heard him testify may decide to overturn the determinations of the two lower Court Judges who did hear his testimony, and in the case of the United States District Court, the officer's explanation of his previous testimony.

II

The Officer's Investigation

The petitioner has previously discussed in detail his reasons in support of the propriety of Officer Connolly's decision to investigate the information received, at pages 9 through 11 of his initial brief. The matter is further thoroughly discussed in the briefs of the Amicus Curiae.

Petitioner views the activity of the officer in determining to make this investigation one of the two pivotal issues to be considered by the Court.

The position of the respondent on the question of Connolly's action in leaving the gasoline station and walking over to respondent's auto is not clear. At page 12 of his brief the respondent acknowledges that the Courts "seem quick to recognize the existence of such a right (to stop) upon grounds falling short of probable cause". Clearly, respondent does not expressly claim that the officer was in any manner constitutionally proscribed from investigating the information and does not quote any authority in support of such a position.

Petitioner submits that there does exist abundant authority for an officer's right to investigate information regardless of probable cause. Cf. *Terry* v. *Ohio*, 392 U.S. 1, 22, 88 S. Ct. 1868, 20 L. Ed. 2d 889; *U.S.* v. *James*, 452 F. 2d 1375, 1377 (1971).

III

The Officer's Seizure of the Pistol

The respondent at page 13 of his brief cites eight cases as authority for his proposition that in order to justify a seizure a police officer "must observe facts which justify his belief that the suspect is armed and dangerous." The assignment of the holdings of these cases to this legal principle is at best questionable and each of the eight cases can be clearly and emphatically distinguished from the instant factual situation.

Commonwealth v. *Berrios*, 437 Pa. 338, 263 A. 2d 342 (1970), involved a search of two men, one of whom happened to be a Negro in dark clothing and one whom was a Puerto Rican wearing light clothing. There was no information linking these two particular persons with criminal activity and the Supreme Court of Pennsylvania

quite clearly relied on this deficiency in holding "under these circumstances, then every Puerto Rican wearing light clothing and walking with a negro in this area could likewise be validly searched".

The Court in no way holds that a protective search for weapons must as a matter of law result from the officer's personal observation and cannot be predicated upon information received, and in fact clearly refers to the lack of sufficient information involving these subjects with the commission of a crime.

Likewise the decision of the Pennsylvania Superior Court in *Commonwealth* v. *Clarke*, 219 Pa. Super. 340, 280 A. 2d 662 (1971), is not a holding that an officer's concern for his safety cannot be based upon information received and must be based solely upon his observations. The Court expressly mentions that the officer in question had no information at all that a crime had been committed and does indicate that the existence of such information would have been relevant.

In *Finley* v. *People*, 488 P. 2d 883 (Colo. 1971), cited by respondent, the Court clearly stated that there was no evidence of any sort indicating that the subject may have been armed and even further the Court appeared satisfied that the officer knew that a bulge in the defendant's pocket was a roll of bills and was not removed in the belief that it was a weapon. Again quite clearly, the Court does not limit a protective search to the occasion where an officer has personally made particular observations.

The case of *People* v. *Navran*, 483 P. 2d 228 (Colo. 1971), likewise involves a situation where the officer had no basis at all for suspecting that the subject might be armed. The case involves two persons who drove an automobile into a driveway which was under surveillance after which they were immediately patted down and a plastic bag of marijuana was removed from the defendant's shirt pocket. The Court stated three requisites for a protective search as

follows: "There must be a) some reason for the officer to confront the citizen in the first place; b) something in the circumstances, including the citizen's reaction to the confrontation, must give the officer reason to suspect that the citizen may be armed and, thus, dangerous to the officer or others; and c) the search must be limited to a frisk directed at discovery and appropriation of weapons and not at evidence in general".

United States v. Dowling, 271 A. 2d 406 (D.C. 1970) cited by respondent, does involve a factual situation strikingly similar to the instant situation. Here officers do receive information from an unidentified and essentially unknown individual to the effect that a person wearing a long black overcoat had a gun in his pocket and had entered an adjacent alley. Investigation disclosed a subject in the alley and a protective search uncovered gambling paraphernalia. Citing *Terry* v. *Ohio*, ante, the Court quotes this Court's designation of the two areas to be examined in the consideration of a protective search, namely 1) whether the officer's action was justified at its inception; and 2) whether it was reasonably related in scope to the circumstances which justified the interference in the first place. The Court proceeds to resolve this dual inquiry in favor of the officers' actions under the circumstances and sustains the validity of the seizure.

United States v. *Lee*, 271 A. 2d 566 (D.C. 1971) involves essentially the seizure of a visible bulge beneath an individual's shirt with little or no additional justification. The Court sustains the seizure. Clearly this decision does not hold that specific information that a person is armed cannot justify a protective search.

In *United States* v. *Nicholas*, 448 F. 2d 622 (1971) the Court again applies the aforestated dual inquiry consideration originated in *Terry* and applied in *United States* v. *Dowling*, ante. Factually there existed no basis for any investigation except an auto with out of state

license plates and in determining this to be an insufficient basis for an intrusion the Court expressly includes within its holding the observations that 1) the police were not investigating any particular crime and 2) the police had *no information* respecting the car or its occupants.

Finally, the case of *United States ex rel. Richardson* v. *Rundle*, 325 F. Supp. 1262 (1971) cited by the respondent, involves a substantially different factual situation encompassing a police officer's search of an individual who *might* have been one of a number of youths observed running from the steps of a drug store. The Court aptly points out that the officer was not motivated by any fear for his personal safety; had no knowledge that any criminal act had taken place; and was unable to refer to any particular facts from which he could reasonably infer that criminal activity might be afoot.

The petitioner refers to these eight reported decisions exclusively for emphasizing that not one of the cases holds either directly or indirectly that specific information from a known source cannot be just as persuasive as observed activity in igniting police inquiry. The petitioner emphatically disputes that these eight decisions, or indeed any single one of them, stands for the proposition that an officer *must* personally observe activity or facts to justify a protective search.

Conversely it does appear that there is substantial authority that information received by a police officer may serve as the basis upon which he initiates an investigation or a protective search. Cf. *United States* v. *Sims*, 450 F. 2d 261 (1971); *Meade* v. *Cox*, 438 F. 2d 323, 324, certiorari denied, —— U.S. —— (1971); *U.S.* v. *Unverzagt*, 424 F. 2d 396 (1970); *Gaskins* v. *United States*, 262 A. 2d 810 (D.C. 1970).

Acknowledgement that the origin of an officer's investigation may be information which he receives in the line of duty may also be found in the case of *Sibron* v. *New*

York, 392 U.S. 40 at pages 62 and 63 where the Chief Justice makes express mention that Officer Martin had received no information concerning Sibron, and certainly indicates that information received might well be considered among the particular facts from which the officer infers that an individual is armed and dangerous.

In conclusion the petitioner respectfully submits and urges upon the Court that the submitted position of the respondent that to support a protective search the police officer must personally observe facts justifying a belief that an individual is armed and dangerous is not supported by existing legal authority and is not consistent with the legitimate requirements of police protection.

IV

The Arrest and Contemporaneous Search

In his written brief to the Second Circuit Court of Appeals the respondent suggested for the first time that his arrest for possession of his loaded pistol might be questioned for the reason that he could have had a permit to carry the weapon. This claim was never presented to the Connecticut Circuit Court, Superior Court or Supreme Court or the United States District Court.[1] It is further undisputed that he did not have any permit to carry the weapon, and no reference to that possibility is contained in his petition.

When advised of his Constitutional rights on Hamilton Street, respondent never indicated that he had a permit to carry a pistol (A-107). The speculation of such a pos-

[1] The record contains the Respondent's 14 page claim of law filed in the District Court and never mentioning the alleged possibility that if he had obtained a gun permit his possession of the weapon could have been legal. Accordingly no evidence was ever offered relative to the area of pistol permits and to the frequency with which they are issued.

siblity arose for the first time in the Second Circuit Court of Appeals. Authority distinguishing the difference between probable cause to arrest and proof beyond a reasonable doubt is legend and need not be repeated.

The petitioner respectfully submits that the heroin taken from the respondent's person and the machete taken from under the front seat of his automobile were seized legally incident to the respondent's valid arrest for possession of the pistol. The respondent and the automobile were searched on Hamilton Street immediately after he was arrested (A-94, 108). Unquestionably, when a person is lawfully arrested, the police have the right, without a search warrant, to make a contemporaneous search of his person and to an extent depending on the circumstances of the case, to the place where he is arrested. *Preston* v. *U.S.*, 376 U.S. 364, 367, 84 S. Ct. 881, 11 L. Ed. 2d 777.

The petitioner submits that the machete was not beyond the area of the respondent's control. He alone knew it was under the seat. It is not unreasonable to assume that even after his arrest he could have made an effort to seize and use it. The petitioner disagrees with the respondent's comparison of the instant factual situation with that which existed in the case of *Shipley* v. *California*, 395 U.S. 818, 89 S. Ct. 2053, 23 L. Ed. 2d 732.

Conclusion

Respondent has never maintained, either expressly or implicitly, that Officer Connolly was showing a lack of courage in being concerned for his safety and welfare on Hamilton Street; that his actions were the product of a volatile or inventive imagination; or that he did not remove the revolver from respondent's waist or the heroin from his person.

Further, respondent has never offered any indication of what he would have done with his loaded revolver on that particular morning if it had not been removed. What would have happened will never be known.

Petitioner respectfully urges that the judgment of the Court of Appeals for the Second Circuit should be reversed.

Respectfully submitted,

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Attorney for Petitioner.

Syllabus

ADAMS, WARDEN *v.* WILLIAMS

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 70-283. Argued April 10, 1972—Decided June 12, 1972

Acting on a tip supplied moments earlier by an informant known to him, a police officer asked respondent to open his car door. Respondent lowered the window, and the officer reached into the car and found a loaded handgun (which had not been visible from the outside) in respondent's waistband, precisely where the informant said it would be. Respondent was arrested for unlawful possession of the handgun. A search incident to the arrest disclosed heroin on respondent's person (as the informant had reported), as well as other contraband in the car. Respondent's petition for federal habeas corpus relief was denied by the District Court. The Court of Appeals reversed, holding that the evidence that had been used in the trial resulting in respondent's conviction had been obtained by an unlawful search. *Held:* As *Terry v. Ohio*, 392 U. S. 1, recognizes, a policeman making a reasonable investigatory stop may conduct a limited protective search for concealed weapons when he has reason to believe that the suspect is armed and dangerous. Here the information from the informant had enough indicia of reliability to justify the officer's forcible stop of petitioner and the protective seizure of the weapon, which afforded reasonable ground for the search incident to the arrest that ensued. Pp. 145–149.

441 F. 2d 394, reversed.

REHNQUIST, J., delivered the opinion of the Court, in which BURGER, C. J., and STEWART, WHITE, BLACKMUN, and POWELL, JJ., joined. DOUGLAS, J., filed a dissenting opinion, in which MARSHALL, J., joined, *post*, p. 149. BRENNAN, J., filed a dissenting opinion, *post*, p. 151. MARSHALL, J., filed a dissenting opinion, in which DOUGLAS, J., joined, *post*, p. 153.

Donald A. Browne argued the cause and filed briefs for petitioner.

Edward F. Hennessey argued the cause and filed a brief for respondent.

Briefs of *amici curiae* urging reversal were filed by *Solicitor General Griswold, Assistant Attorney General Petersen,* and *Beatrice Rosenberg* for the United States; by *Frank S. Hogan, pro se, Michael R. Juviler,* and *Herman Kaufman* for the District Attorney of New York County; and by *Frank G. Carrington, Jr., Alan S. Ganz, Wayne W. Schmidt,* and *Glen R. Murphy* for Americans for Effective Law Enforcement, Inc., et al.

Burt Neuborne and *Melvin L. Wulf* filed a brief for the American Civil Liberties Union as *amicus curiae.*

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent Robert Williams was convicted in a Connecticut state court of illegal possession of a handgun found during a "stop and frisk," as well as of possession of heroin that was found during a full search incident to his weapons arrest. After respondent's conviction was affirmed by the Supreme Court of Connecticut, 157 Conn. 114, 249 A. 2d 245 (1968), this Court denied certiorari. 395 U. S. 927 (1969). Williams' petition for federal habeas corpus relief was denied by the District Court and by a divided panel of the Second Circuit, 436 F. 2d 30 (1970), but on rehearing *en banc* the Court of Appeals granted relief. 441 F. 2d 394 (1971). That court held that evidence introduced at Williams' trial had been obtained by an unlawful search of his person and car, and thus the state court judgments of conviction should be set aside. Since we conclude that the policeman's actions here conformed to the standards this Court laid down in *Terry* v. *Ohio,* 392 U. S. 1 (1968), we reverse.

Police Sgt. John Connolly was alone early in the morning on car patrol duty in a high-crime area of Bridgeport, Connecticut. At approximately 2:15 a.m. a person known to Sgt. Connolly approached his cruiser

and informed him that an individual seated in a nearby vehicle was carrying narcotics and had a gun at his waist.

After calling for assistance on his car radio, Sgt. Connolly approached the vehicle to investigate the informant's report. Connolly tapped on the car window and asked the occupant, Robert Williams, to open the door. When Williams rolled down the window instead, the sergeant reached into the car and removed a fully loaded revolver from Williams' waistband. The gun had not been visible to Connolly from outside the car, but it was in precisely the place indicated by the informant. Williams was then arrested by Connolly for unlawful possession of the pistol. A search incident to that arrest was conducted after other officers arrived. They found substantial quantities of heroin on Williams' person and in the car, and they found a machete and a second revolver hidden in the automobile.

Respondent contends that the initial seizure of his pistol, upon which rested the later search and seizure of other weapons and narcotics, was not justified by the informant's tip to Sgt. Connolly. He claims that absent a more reliable informant, or some corroboration of the tip, the policeman's actions were unreasonable under the standards set forth in *Terry* v. *Ohio*, *supra*.

In *Terry* this Court recognized that "a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest." *Id.*, at 22. The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, *Terry* recognizes that it may be the essence of good police work to adopt an intermediate response.

See *id.*, at 23. A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time. *Id.*, at 21–22; see *Gaines* v. *Craven*, 448 F. 2d 1236 (CA9 1971); *United States* v. *Unverzagt*, 424 F. 2d 396 (CA8 1970).

The Court recognized in *Terry* that the policeman making a reasonable investigatory stop should not be denied the opportunity to protect himself from attack by a hostile suspect. "When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others," he may conduct a limited protective search for concealed weapons. 392 U. S., at 24. The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence, and thus the frisk for weapons might be equally necessary and reasonable, whether or not carrying a concealed weapon violated any applicable state law. So long as the officer is entitled to make a forcible stop,[1] and has reason to believe that the suspect is armed and dangerous, he may conduct a weapons search limited in scope to this protective purpose. *Id.*, at 30.

Applying these principles to the present case, we believe that Sgt. Connolly acted justifiably in responding to his informant's tip. The informant was known to him personally and had provided him with information in the past. This is a stronger case than obtains in the case of an anonymous telephone tip. The informant here came forward personally to give information that was immediately verifiable at the scene. Indeed, under

[1] Petitioner does not contend that Williams acted voluntarily in rolling down the window of his car,

Connecticut law, the informant might have been subject to immediate arrest for making a false complaint had Sgt. Connolly's investigation proved the tip incorrect.[2] Thus, while the Court's decisions indicate that this informant's unverified tip may have been insufficient for a narcotics arrest or search warrant, see, *e. g., Spinelli* v. *United States,* 393 U. S. 410 (1969); *Aguilar* v. *Texas,* 378 U. S. 108 (1964), the information carried enough indicia of reliability to justify the officer's forcible stop of Williams.

In reaching this conclusion, we reject respondent's argument that reasonable cause for a stop and frisk can only be based on the officer's personal observation, rather than on information supplied by another person. Informants' tips, like all other clues and evidence coming to a policeman on the scene, may vary greatly in their value and reliability. One simple rule will not cover every situation. Some tips, completely lacking in indicia of reliability, would either warrant no police response or require further investigation before a forcible stop of a suspect would be authorized. But in some situations—for example, when the victim of a street crime seeks immediate police aid and gives a description of his assailant, or when a credible informant warns of a specific impending crime—the subtleties of the hearsay rule should not thwart an appropriate police response.

While properly investigating the activity of a person who was reported to be carrying narcotics and a concealed weapon and who was sitting alone in a car in a high-crime area at 2:15 in the morning, Sgt. Connolly

[2] Section 53–168 of the Connecticut General Statutes, in force at the time of these events, provided that a "person who knowingly makes to any police officer . . . a false report or a false complaint alleging that a crime or crimes have been committed" is guilty of a misdemeanor.

had ample reason to fear for his safety.[3] When Williams rolled down his window, rather than complying with the policeman's request to step out of the car so that his movements could more easily be seen, the revolver allegedly at Williams' waist became an even greater threat. Under these circumstances the policeman's action in reaching to the spot where the gun was thought to be hidden constituted a limited intrusion designed to insure his safety, and we conclude that it was reasonable. The loaded gun seized as a result of this intrusion was therefore admissible at Williams' trial. *Terry* v. *Ohio*, 392 U. S., at 30.

Once Sgt. Connolly had found the gun precisely where the informant had predicted, probable cause existed to arrest Williams for unlawful possession of the weapon. Probable cause to arrest depends "upon whether, at the moment the arrest was made . . . the facts and circumstances within [the arresting officers'] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offense." *Beck* v. *Ohio*, 379 U. S. 89, 91 (1964). In the present case the policeman found Williams in possession of a gun in precisely the place predicted by the informant. This tended to corroborate the reliability of the informant's further report of narcotics and, together with the surrounding circumstances, certainly suggested no lawful explanation for possession of the

[3] Figures reported by the Federal Bureau of Investigation indicate that 125 policemen were murdered in 1971, with all but five of them having been killed by gunshot wounds. Federal Bureau of Investigation Law Enforcement Bulletin, Feb. 1972, p. 33. According to one study, approximately 30% of police shootings occurred when a police officer approached a suspect seated in an automobile. Bristow, Police Officer Shootings—A Tactical Evaluation, 54 J. Crim. L. C. & P. S. 93 (1963).

gun. Probable cause does not require the same type of specific evidence of each element of the offense as would be needed to support a conviction. See *Draper* v. *United States*, 358 U. S. 307, 311–312 (1959). Rather, the court will evaluate generally the circumstances at the time of the arrest to decide if the officer had probable cause for his action:

> "In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Brinegar* v. *United States*, 338 U. S. 160, 175 (1949).

See also *id.*, at 177. Under the circumstances surrounding Williams' possession of the gun seized by Sgt. Connolly, the arrest on the weapons charge was supported by probable cause, and the search of his person and of the car incident to that arrest was lawful. See *Brinegar* v. *United States*, *supra*; *Carroll* v. *United States*, 267 U. S. 132 (1925). The fruits of the search were therefore properly admitted at Williams' trial, and the Court of Appeals erred in reaching a contrary conclusion.

Reversed.

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE MARSHALL concurs, dissenting.

My views have been stated in substance by Judge Friendly, dissenting, in the Court of Appeals. 436 F. 2d 30, 35. Connecticut allows its citizens to carry weapons, concealed or otherwise, at will, provided they have a permit. Conn. Gen. Stat. Rev. §§ 29–35, 29–38. Connecticut law gives its police no authority to frisk a person for a permit. Yet the arrest was for illegal possession of a gun. The only basis for that arrest was the informer's